

REMARKS

This Amendment under 37 CFR §1.111 is being submitted in response to the out-standing Official Action mailed June 9, 2004, in which claims 1 – 4 and 9 were allowed, which is gratefully acknowledged. In view of the above claim amendments and the following Remarks, reconsideration of the rejection of the remaining pending claims and allowance of this application is respectfully requested.

Claims 5 and 8 have been amended to correct a typographical error, and Claim 8 has been further amended to delete subject matter overlapping with claim 12 of U.S. Patent No. 6,645,969. In particular, Claims 5 and 8 are amended to replace “4-(2-phenylphenyl)-6,7-dimethoxyquinazoline” with “4-(3-phenylphenyl)- 6,7-dimethoxyquinazoline.” The 3-phenylphenyl compound is disclosed at page 13, line 5 of the Specification, and is not new matter.

For reasons which are submitted below, the claims are believed to be in condition for allowance. The claim amendments are believed to resolve the concerns raised by the Examiner regarding overlap with claim 12 of U.S. Patent No. 6,645,969. Accordingly, reconsideration is respectfully requested.

Turning to the Official Action, Claim 8 was rejected under 35 U.S.C. §101 for statutory double patenting in view of claim 12 of U.S. Patent No. 6,645,969 (the '969 patent). The Examiner cited claim 12 of the '969 patent as being directed to 4-(naphthalene-2-ylethynyl)-6,7-dimethoxyquinazoline, 4-phenylacetlyenyl-6,7-dimethoxyquinazoline, 4-(2-phenylphenyl)-6,7-dimethoxyquinazoline and 4-(naphthalene-1-ylethynyl)-6,7-dimethoxyquinazoline. This rejection is respectfully traversed in view of the above amendment to Claim 8 for the reasons set forth hereinafter.

Applicants respectfully disagree that Claim 8 is unpatentable for statutory double patenting in view of claim 12 of the '969 patent. Claim 8 of the present application lists 16 compounds, while Claim 12 of the '969 patent lists only 4. The two claims lack the identity of scope required for a statutory double patenting rejection to be proper.

Nevertheless, to expedite allowance of the present application, Applicants have deleted the overlapping subject matter from Claim 8. In this regard, only three of the four compounds listed in Claim 12 of the '969 patent are also listed in Claim 8 of the present application, 4-(naphthalene-2-ylethynyl)-6,7-dimethoxyquinazoline, 4-phenylacetylenyl-6,7-dimethoxy-quinazoline and 4-(naphthalene-1-yl-ethynyl)-6,7-dimethoxyquinazoline. These compounds have been deleted from Claim 8 of the present application.

Claim 12 of the '969 patent does not list 4-(2-phenylphenyl)-6,7-dimethoxy-quinazoline, nor is 4-(3-phenylphenyl)-6,7-dimethoxyquinazoline listed. The fourth compound listed in Claim 12 of the '969 patent is 4-(2-phenylethylenyl)-6,7-dimethoxyquinazoline, which is not listed in Claim 8 of the present application.

Accordingly, the amendments to Claim 8 of the present application completely eliminate the overlap with Claim 12 of the '969 patent. Reconsideration by the Examiner and withdrawal of the rejection of Claim 8 for statutory double patenting under 35 U.S.C. §101 is therefore respectfully requested.

Next, Claims 5 – 8 were rejected for obviousness-type double patenting in view of "claim 2, 11 [(sic.)] of U.S. Patent No. 6541462 [(the '462 patent)]. According to the Examiner, "US '462 teaches a generic formula which encompasses the compounds and compositions of the instant claims." The Examiner concluded that it would therefore have been obvious to one having ordinary skill in the art to make the presently claimed compounds and compositions of Claims 5 – 8. This rejection is respectfully traversed for the following reasons.

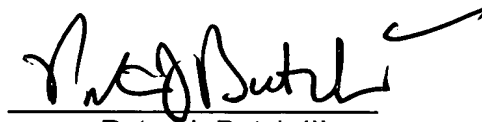
The '462 patent is entitled, "Sphingomyelin Enhancement of Tumor Therapy." There is no disclosure of the quinazoline compound subject matter of the present application. There is not even an eleventh claim, which was cited by the Examiner. Furthermore, the '462 patent and present application are not commonly-owned, making an obviousness-type double patenting rejection improper.

Two telephone messages were left with the Examiner inquiring whether this was a typographical error, one soon after the Official Action was received. Neither

call was returned. Accordingly, Applicants respectfully traverse this rejection on the basis that the subject matter of Claims 5 – 8 of the present application is completely unrelated to the subject matter of the Claims of the '462 patent, and therefore not obvious in view of same. Reconsideration by the Examiner and withdrawal of this rejection is therefore respectfully requested.

Accordingly, in view of the above claim amendments and the foregoing remarks, this application is now in condition for allowance. Reconsideration is respectfully requested. The Examiner is requested to telephone the undersigned if it is believed that there are any remaining issues in this application to be resolved. Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge Applicants' Deposit Account No. 19-5425 therefor.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter J. Butch III", with a long horizontal line extending to the right.

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